

ENTERED

April 01, 2019

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TYREESE D. BUTLER, §
(SPN #02918321) §
Plaintiff, §
§
vs. § CIVIL ACTION H-19-1125
§
§
KIM OGG, et al., §
§
§
Defendants. §

MEMORANDUM AND OPINION

Tyreese D. Butler, a Harris County Jail inmate, sued in March 2019, alleging civil rights violations resulting from a denial of due process. Butler, proceeding pro se and in forma pauperis, sues Kim Ogg, Harris County District Attorney; Ed Gonzalez, Sheriff of Harris County; and Harris County. The threshold issue is whether Butler's claims should be dismissed as duplicative of pending litigation.

I. Standard of Review

Under 28 U.S.C. § 1915A, federal courts are authorized to review, before docketing, if feasible, or in any event as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. The Court must dismiss any part of the complaint that is frivolous, malicious, or fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. A complaint is frivolous if it lacks an arguable basis in law or fact. *See Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Richardson v. Spurlock*, 260 F.3d 495, 498 (5th Cir.

2001)(citing *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997)). “A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist.” *Davis v. Scott*, 157 F.3d 1003, 1005 (5th Cir. 1998)(quoting *McCormick v. Stalder*, 105 F.3d 1059, 1061 (5th Cir. 1997)).

II. Discussion

Butler filed another civil rights complaint on March 12, 2019, Civil Action No. 4:19-0916. Civil Action No. 4:19-0916 and the instant lawsuit name the same defendants and relate to the imposition of an excessive bail. He states that he has been confined since September 5, 2017, and his bond was set at \$50,000.00. The complaints in both cases are nearly identical. Because it duplicates the allegations of Civil Action Number 4:19-0916, a pending federal lawsuit Butler filed, this action is DISMISSED without prejudice as improvidently filed. 28 U.S.C. § 1915A(b)(1).

III. Conclusion

Butler’s motion to proceed in forma pauperis, (Docket Entry No. 2), is GRANTED. The action filed by Tyreese D. Butler (SPN #02918321) is DISMISSED without prejudice as improvidently filed.

SIGNED at Houston, Texas, on April 1, 2019.



VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE